

REMARKS

The Examiner has required an election in the present application between:

Species A, illustrated in Fig(s). 1-4;

Species B, illustrated in Fig(s). 5;

Species C, illustrated in Fig(s). 6;

Species D, illustrated in Fig(s). 7;

Species E, illustrated in Fig(s). 8-10;

Species F, illustrated in Fig(s). 11a-b;

Species G, illustrated in Fig(s). 12-13;

Species H, illustrated in Fig(s). 14;

Species I, illustrated in Fig(s). 15;

Species J, illustrated in Fig(s). 16;

Species K, illustrated in Fig(s). 17;

Species L, illustrated in Fig(s). 18;

Species M, illustrated in Fig(s). 19;

Species N, illustrated in Fig(s). 20;

Species O, illustrated in Fig(s). 21;

Species P, illustrated in Fig(s). 22;

Species Q, illustrated in Fig(s). 23-24;

Species R, illustrated in Fig(s). 25;

Species S, illustrated in Fig(s). 26;

Species T, illustrated in Fig(s). 27;

Species U, illustrated in Fig(s). 28; and

Species V, illustrated in Fig(s). 29.

For the purpose of examination of the present application, Applicants elect Species A, illustrated in Fig(s). 1-4, with traverse.

Claim(s) 1 to 13, 18 and 19 are directed to the elected species. The Examiner indicates that no claims are generic; however, Applicants respectfully submit that at least claim 1 is generic.

Applicants disagree with the Examiner's election of species requirement in this application for at least the following reasons:

Unity of Invention

Although the Examiner attempts to use the PCT Rules for this election of species requirement, Applicants respectfully submit that the Examiner's unity of invention position is incorrect, as the Examiner, in fact, is using U.S. Restriction/Election practice. Specifically, at paragraph 3 of the Examiner's Office Action, the Examiner indicates that the various species of the present application do not relate to a single general inventive concept under PCT Rule 13.1, because, under PCT Rule 13.2, the species lack the same or corresponding special technical

features. However, there is only one independent claim in the present application, which is generic to all of the dependent claims. Therefore, all claims have the same special technical feature. Under the PCT Rules, you must look to the claimed invention, not the disclosed invention. In view of this, the Examiner's unity of invention requirement is improper and should be withdrawn.

Species Must Be Claimed in a Mutually Exclusive Manner

It is fundamentally improper to require election of one species of the Species A-V set forth by the Examiner. In this regard, the attention of the Examiner is directed to MPEP § 806.04(f) which points out that claims to be restricted to species must be mutually exclusive, i.e., for claims to be properly restricted to different species, those claims must recite the mutually exclusive characteristics of such species. However, all of the species pointed out by the Examiner are not mutually exclusive. For example, the Examiner could require election of one of the shapes of the plug member 8 (for instance, spherical in Figure 1, elliptical in Figure 5, etc.), because it is not possible to have a claim directed to both species at the same time (they are mutually exclusive). In addition, the Examiner could require election of one of the container bodies 3 (for instance, the accordion shaped container body 39 in Figure 21 or the bag shaped container body 40 in Figure 22) because it is not possible to have a claim directed to both species at the same time (they are mutually exclusive).. However, the Examiner in the present case has required that Applicants elect between Figure 1 and Figure 22, for example. Since these aspects of the present invention (type of plug member 8 and type of container body 3) could appear in the same claim, the aspects are not mutually exclusive. In view of this, the Examiner's election of species requirement is improper for this additional reason.

Serious Administrative Burden

Restriction should never be required if the search and examination of an entire application can be made without serious burden, even though the application contains claims to independent and distinct inventions. See MPEP §803. The reasons for this are (a) that there are two criteria for proper restriction between patentably distinct inventions. The first is that the

inventions must be independent or distinct as claimed, and the second is that there must be a serious administrative burden on the examiner to examine the claimed inventions; and (b) 35 USC 121 makes restriction discretionary by stating that the Director may require an application to be restricted to one of two or more independent and distinct claimed inventions in an application.

With respect to the issue of “serious administrative burden,” MPEP §§803, 808, 808,01 and 808,02 discuss and explain USPTO accepted meanings of serious administrative burden.

In this regard, the Office Action never even addresses the issue of serious administrative burden, and is fundamentally improper for this reason alone.

CONCLUSION

For the above reasons, Applicants respectfully request the Examiner to reconsider and withdraw the election of species requirement in this application. However, in order to be responsive to the Examiner’s election requirement at this time, Applicants have elected Figures 1-4, claims 1-13, 18 and 19 for prosecution on the merits. It is noted that the non-elected claims include all of the features of independent claim 1. Therefore, once a generic claim is found to be allowable, the non-elected claims should be re-joined in the present application and examined by the Examiner. To the extent the Examiner continues to use U.S. Restriction/Election practice in this application, Applicants reserve the right to petition the Examiner’s election of species requirement.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Paul C. Lewis, Registration No. 43,368 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

- Attached is a Petition for Extension of Time.
- Attached hereto is the fee transmittal listing the required fees.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

Dated: February 23, 2009

Respectfully submitted,

By 
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